

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**JOHN DYESS,**

**Plaintiff,**

**v.**

**No. 3:07CV-635-WKW**

**AUBURN UNIVERSITY,**

**Defendant.**

**MOTION TO AMEND UNIFORM SCHEDULING ORDER**

The Defendant, Auburn University (“Auburn”), respectfully moves this Court to amend its Uniform Scheduling Order of October 24, 2007 (Doc. No. 26), to remove the requirement of a face-to-face meeting to discuss the prospect of settlement. As grounds for this motion, Auburn states the following:

Section 3 of the Scheduling Order provides, in full:

On or before May 2, 2008, counsel<sup>1</sup> for all parties shall conduct a face-to-face settlement conference at which counsel shall engage in good faith settlement negotiations. If settlement cannot be reached, counsel shall also discuss whether mediation will assist the parties in reaching settlement. Not less than FIVE (5) DAYS after this conference, counsel for the plaintiff shall file a pleading titled “Notice Concerning Settlement Conference and Mediation.” This pleading shall indicate whether settlement was reached and, if not, whether the

---

<sup>1</sup> Given this Section’s references to “counsel,” it may be that the Court does not normally intend for this Section to apply in *pro se* cases.

parties believe mediation will assist them in resolving this case short of trial. Information about mediation is attached to this order.

(Doc. No. 26 at 2, Section 3.)

The Plaintiff is proceeding *pro se* and lives in Mobile, Alabama. The office of undersigned counsel is in Birmingham. The presumed location for a meeting would be in counsel's office in Montgomery. Even meeting halfway, though, this meeting would involve significant expense for both the Plaintiff and Defendant.

In his separate report pursuant to Fed.R.Civ.P. 26(f) (Doc. No. 20), Plaintiff indicated that he was seeking \$1.5 million in damages. In Plaintiff's Initial Disclosures, he listed \$2.2 million in damages.

Undersigned counsel took the Rule 30 deposition upon oral examination of the Plaintiff on Friday, March 28, 2008. Counsel inquired of Plaintiff about his apparent demand for \$1.5 million or more in damages. In response, Plaintiff reaffirmed his belief that he should receive at least \$1.5 million in damages, if not more.

Auburn considers Plaintiffs' demands to be very excessive and unreasonable, even if Plaintiff were fully successful in his claims against Auburn. Auburn considers Plaintiff's claims to be without merit and intends to proceed with its motion for summary judgment in accordance with the June 6, 2008 deadline set forth in the Order.

Because of these factors, Auburn judges the probability of settlement to be very low. Auburn respectfully submits that it would be an unnecessary burden and expense for both the Plaintiff and the Defendant for the meeting to take place as ordered.

For these reasons, Auburn respectfully moves the Court to amend its order of October 24, 2007 (Doc. No. 26) by striking Section 3 thereof.

Respectfully submitted,

/s Aaron L. Dettling

DAVID R. BOYD  
AARON L. DETTLING

Attorneys for the Defendant, Auburn  
University

OF COUNSEL:

David R. Boyd (BOY005)  
Aaron L. Dettling (DET003)  
Balch & Bingham LLP  
Post Office Box 306  
Birmingham, Alabama 35201-0306  
Telephone: (205) 226-8723  
Facsimile: (205) 488-5699

Lee F. Armstrong  
General Counsel, Auburn University  
101 Samford Hall  
Auburn, Alabama 36849  
Telephone: (334) 844-5176  
Facsimile: (334) 844-4575

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7th day of April, 2008, I mailed a true and correct copy of the foregoing to the Plaintiff via first-class mail addressed as follows:

John W. Dyess  
1509 Union Street  
Mobile, Alabama 36617

/s Aaron L. Dettling

OF COUNSEL